



Col. Christopher Lestochi
District Commander
U.S. Corps of Engineers
P.O. Box 6898 (CEPOA-RD)
JBER, AK 99506-0898

Re: Native Village of Tyonek and the Ch'u'itna Coal Project
Regulatory Division POA-2006-753

Dear Col. Lestochi:

I am writing this letter to formally request resolution of several issues that have a bearing on the Native Village of Tyonek's (NVT) continuing role as a Cooperating Agency in the development of the Supplemental Environmental Impact Statement (SEIS) regarding the Ch'u'itna Coal Development Project. This request for dispute resolution is supported by section V.1. of the Memorandum of Understanding between the U.S. Army Corp. of Engineers and the Cooperating Agencies which was signed by your predecessor, Col. Koenig, on October 12, 2011.

It is unfortunate that we must request such dispute resolution given the demands on your time but NVT believes that it is necessary to clarify roles and responsibilities of the Corp. and the Cooperating Agencies in order to respectfully move forward in the SEIS process.

Our dispute with the Corp relates to our on-going frustration in being denied relevant information in a timely fashion so as to be able to weigh in with our concerns and comments. Our legal counsel has been told that the Tribe lacks the "technical expertise" to justify being on the sub-groups that review and give comment on the various draft chapters within the formal time frame. Instead, we are told that copies of the reports will be made available upon request at a later time. As Project Manager Marcia Heer states, "while there may not be an official comment period associated with these reports prior to the preliminary draft SIES review, if there are concerns from the CAs regarding data gaps, etc., it would be important to let us know so that we can evaluate whether more information is needed." (See attached e:mail correspondence). This is wholly inadequate as it denies NVT the ability to offer its input on the record while the draft methodologies are being developed. This is contrary to the letter and the spirit of the Memorandum of Agreement (MOU) between the Corp and NVT and violates the principles of Government-to-Government consultation that the Corp is bound to under Executive Order 13175.

The notion that NVT lacks technical expertise and therefore has little to offer in terms of comment is highly offensive. The NVT is a federally recognized Tribe that has the capacity to retain technical experts that possess qualifications that enable them to offer their views based on

the best science. In addition, as a federally recognized Tribe, and under the principles of Government-to-Government consultation, NVT can call on the expertise of the other federal agencies. The MOU between NVT and the Corp does not undermine or trump the requirements of Government-to Government consultation that *all* federal agencies must abide by.


Finally, on October 12, 2012, I received a letter from Acting Regulatory Chief, Ms. Stinnett-Herczeg, threatening to remove NVT as a Cooperating Agency in the development of the SEI on the claimed assertion that NVT improperly retained a Non-Governmental Organization (NGO) to review and draft comments on the Draft Wetlands Functional Assessment Methodology Report. NVT's attorney has sent a response letter to the Regulatory Chief with a disclosure statement from NVT's expert and I copy you here with both. This is the second time that NVT has been threatened with removal of its Cooperating Agency status on grounds that are either incorrect or unsubstantiated. This heavy-handedness is a poor hallmark for respectful dialogue between Government-to-Government agencies.

Accordingly, I respectfully request that you elevate our concerns to dispute resolution and make a formal decision regarding:

- 1) NVT's ability to access information, including all draft reports, in a timely fashion to be able to offer comments during the formal 30 day comment period that the working groups are subject to;
- 2) NVT's ability to hire and retain its own experts and employees to serve and assist the Tribe in the draft SEIS process with the understanding that all work done on behalf of the Tribe by its experts and employees be treated as confidential and proprietary prior to the draft SEIS being open to public review.

I appreciate your attention to this matter. If you have further questions you can contact me or NVT's attorney Heather Kendall-Miller at Kendall@narf.org or at 257-0505 to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Standifer III", with a stylized flourish at the end.

President Frank Standifer III